

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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2021 DEC 28 AM 11:41

Eryn J. Hernandez

Write the full name of each plaintiff.

No. _____
(To be filled out by Clerk's Office)

-against-

J. Spano

John Doe 1, John Doe 2

John Doe 3, John Doe 4,

John Doe 5

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

COMPLAINT

(Prisoner)

Do you want a jury trial?

☒ Yes ☐ No

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

☒ Violation of my federal constitutional rights

☐ Other:

Violation of Civil Rights (U.S. Const. Am. 2)

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

Eryn J. Hernandez
First Name Middle Initial Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

21-R-0336

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Groveland Correctional Facility
Current Place of Detention

P.O. Box 50
Institutional Address

Sonyea N.Y. 14556
County, City State Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☒ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1: J. Spano (unknown)
 First Name Last Name Shield #
Correctional Officer
 Current Job Title (or other identifying information)
Ulster Correctional Facility
 Current Work Address
Ulster Co., Napanoch, N.Y. 12458-0800
 County, City State Zip Code

Defendant 2: John Doe 1
 First Name Last Name Shield #
Correctional Officer
 Current Job Title (or other identifying information)
Ulster Correctional Facility
 Current Work Address
Ulster Co., Napanoch, N.Y. 12458-0800
 County, City State Zip Code

Defendant 3: John Doe 2
 First Name Last Name Shield #
Correctional Officer
 Current Job Title (or other identifying information)
Ulster Corr. Facility
 Current Work Address
Ulster Co., Napanoch, N.Y. 12458-0800
 County, City State Zip Code

Defendant 4: John Doe 3
 First Name Last Name Shield #
Correctional Officer
 Current Job Title (or other identifying information)
Ulster Correctional Facility
 Current Work Address
Ulster Co., Napanoch, N.Y. 12458-0800
 County, City State Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: Ulster County, New York State Corr. Facility
Ulster Correctional Facility

Date(s) of occurrence: August 8, 2021

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

(See Annexed Affidavit in support of 42 U.S.C. 1983.)

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

See Annexed Affidavit in Support of
42 U.S.C. 1983

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

Plaintiff seeks damages in severe emotional distress, as well as the mental and physical damage done to plaintiff; that went right against his state, and Federal Constitutional right; to be free from cruel and unusual punishment. Compensatory damages to be determined At trial. Punitive damages to be determined at trial.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

December 17, 2021
 Dated _____ Plaintiff's Signature _____
Eryn J. Hernandez
 First Name Middle Initial Last Name
Graveland Correctional Facility, P.O. Box 50, Sunnyside
 Prison Address
Water Co., Livingston Co. N.Y. 14556
 County, City State Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Eryn J. Spano

(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

CV () ()

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

J. Spano, John Doe 1, John Doe 2,

John Doe 3, John Doe 4, John Doe 5.

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☒ Yes ☐ No (If "No," go to Question 2.)

I am being held at:

Groveland Correctional Facility

Do you receive any payment from this institution? ☒ Yes ☐ No

Monthly amount: \$25/mo. / State pay

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☒ No

If "yes," my employer's name and address are:

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment ☐ Yes ☒ No

(b) Rent payments, interest, or dividends ☐ Yes ☒ No

- | | | |
|---|------------------------------|--|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

Incarcerated Individual

4. How much money do you have in cash or in a checking, savings, or inmate account?

0

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

"None"

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

"None"

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

"None" — Except Child Support; Rome Hernandez.

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

"None"

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

<u>12/17/21</u>		<u>y</u>	
Dated		Signature	
<u>Hernandez, Eryn J.</u>		<u>21 R 0336</u>	
Name (Last, First, MI)		Prison Identification # (if incarcerated)	
<u>P.O. Box 50, Sonoma, N.Y.</u>		<u>14556</u>	
Address		City	State Zip Code
			<u>N/A</u>
Telephone Number <u>wife, girlfriend/partner</u>		E-mail Address (if available)	


AFFIDAVIT OF SERVICE

State of New York)
County of Livingston) ss.:

ERYN J. HERNANDEZ, being duly sworn, deposes and says:
That on the 20 day of DECEMBER, 2021, I served a true copy of the
within: 42 USC 1983

by depositing the same, endorsed in a postpaid properly addressed envelope, in the
official depository in Groveland Correctional Facility under the exclusive care and
custody of the New York State Department of Corrections and Community Supervision
Services, addressed and sent to the following individuals at the addresses designated by
them:

United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl St.
N.Y.C. 10007-1312

ERYN J. HERNANDEZ 
DIN # 21 R 0336
Groveland Correctional Facility
PO Box 50
Sonyea, NY 14556

SWORN BEFORE ME THIS 19th

DAY OF December, 2021

S. Lee Wolcott
NOTARY PUBLIC

S. LEE WOLCOTT
Notary Public, State of New York
Reg. No. 01WO6416527
Qualified in Livingston County
Commission Expires 04/19/2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
SDNY PRO SE OFFICE

Eryn J Hernandez
(Plaintiff)

2021 DEC 28 AM 11:41

-against-

Affidavit in Support
of 42 U.S.C. § 1983

J. Spano; John Doe 1; John Doe 2;
John Doe 3; John Doe 4; John Doe 5;
New York State Department of
Corrections and Community Supervision.

PLEASE TAKE NOTICE, that upon the annexed 42 U.S.C. § 1983,
and all of the papers heretofore, had herein, I Eryn J Hernandez,
being duly sworn, depose and say that;

- 1) I am the above named Plaintiff, incarcerated at
Groveland Correctional Facility, P.O. Box 50, Sonyea N.Y.
14556. Under Departmental ID No. 21 R 0336.
- 2) That I, Eryn J Hernandez, states these facts, and affirm
under the penalty of perjury, that they are true and correct
to my own knowledge, and upon information and belief, except
of those matters of fact, based upon information and belief.
- 3) The following is the events that occurred on August 8, 2021,
while I was in custody, at the Ulster Correctional Facility,
located in: Ulster County, Napanoch, New York 14556.
- 4) On August 8, 2021, while this Plaintiff was working
the Correctional Messhall, I did retain multiple injuries,
at the hands of Six (6) Correctional Officers, at the direction
of an area Sgt.
- 5) At approx. 6 p.m., on August 8, 2021, my shift at the
messhall ended. Upon exiting the messhall, the Officer J. Spano
did proceed to conduct a routine search or "pat frisk", on my
person. I put my hands on the wall, as required, and my feet

spread, as routine. While Plaintiff was on the wall, Officer J. Spano asked Plaintiff "what is that in your right pocket", Plaintiff replied "it is my inhaler", and as I was pulling it from my pocket, he (Spano), smashed my head onto the wall, at which time C.O Spano, slammed me on the ground, put my arms behind my back, and told me "I'm tiered of your shit", as he called for backup (Plaintiff was laying on the ground with a slash on my face from my head hitting the wall), then C.O. Spano told Plaintiff "We're going to kill you like George Floyd". At this time multiple officers came into the area that I was laying on, with officer Spano on top of me, one officer knee on my neck, at this time the officers are yelling obsinities at me, as I was not moving at all, at well as racial slandering, such as "dirty mexican" and stated that "you should hang yourself like Aaron Hernandez did". At this time, Plaintiff was handcuffed, and at least 5 other Correctional staff was kicking and punching Plaintiff. At this time, Plaintiff was brought to the medical department, and I was seen by two differant nurses. The occurances the occurred at the infirmary are as follows;

a) A Supervisor, either a Sgt, or Lt., did take 15 - 20 pictures, of defendants face, back, ribs, elbow, and torso. These pictures prove, Plaintiffs injuries sustained.

The medical staff did;

b) treated Plaintiffs wounds by, rubbing some cream on my facial wounds, and then I did write down a report, "as the staff advised me to 'keep it short and sweet'". This statement was then taken by the nurse, one of two (names unknown).

6) I was then taken directly to the Special Housing Unit (SHU) or "box". I then spoke to a Captain, as he told me how the SHU operates. Then, I was searched in a single room, then put my person in a single cell.

7) I was issued a misbehavior report with the Officer Spano completely fabricated his statement and report, charging me with Creating a Disturbance, Interference with employee, and Refuse search or frisk. On the third hearing, conducted by Captain Chaloty, on 8/10/2021, at approx. 10:34 a.m. - 3:17 p.m., the same Officer Spano again, lied and fabricated his story, making it seem as though Plaintiff provoked the incident. Plaintiff was then sentenced to a term of 27 days in SHU.

Plaintiff suffered multiple injuries including;

- a) Bruises to the face and head;
- b) gashes to the left side of Plaintiff's face;
- c) Top lip cut;
- d) Bruises to the back of Plaintiff;

ALL INJURIES WERE DOCUMENTED BY MEDICAL STAFF AND PLAINTIFF HAS FOILED A COPY, awaiting DOCCS to respond to Plaintiff's F.O.I.L. Plaintiff has developed serious emotional stress, and anxiety due to this occurrence. This goes right against Plaintiff's Constitutional Right to be free from Cruel and Unusual Punishment, on both the State and Federal levels.

END OF AFFIDAVIT IN SUPPORT OF 42 U.S.C. § 1983.

I, Eryn J Hernandez, do aver, and state, that the above mentioned Affirmation is true and correct, to the facts therein, for the 42 U.S.C. § 1983 motion.

Sworn to me on this 19th Day of December 2021.

S. Lee Wolcott
Signature of the Notary Public

Stamp:

S. LEE WOLCOTT
Notary Public, State of New York
Reg. No. 01WO6416527
Qualified in Livingston County
Commission Expires 04/19/2025

EJH
Eryn J Hernandez
Plaintiff

Eryn J. Hernandez Din # 21 R 0336

GROVELAND CORRECTIONAL FACILITY
PO Box 50, 7000 Sonyea Road
Sonyea, NY 14556

SDNY PRO SE OFFICE

2021 DEC 28 AM 10:42

GROVELAND



CORRECTIONAL FACILITY
GROVELAND CORRECTIONAL FACILITY
BOX 50
SONYEA, NY 14556-0050

50.2 1.967L
neopost FIRST-CLASS MAIL
12/20/2021
US POSTAGE \$001.96⁰



ZIP 14556
041L 11253830

United States District Court
Southern District Of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl St., N.Y.C. 10007-1312

ATTN: Court Clerk

US
SDNY
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LEGAL MAIL